GOVERNMENT OF MADRAS. Sectt. II-16—55,006—3-9-53.

Public Works. (1954) Department.

Endorsement
~~D.O.~~
~~Memorandum~~
~~Lodged~~

No. 27279 F/54-1

Dated · [illegible] 14-- 4--1954.

Closed
SD
27/4.

23

FURTHER PAPERS.

Department.	Number.	Series.	Date.

7 23035C
29/3/54

G.P. 82 (a)—164,468—15-11-52

ADDL. ASST. SECRETARY TO

1-APR 1954

UNDER SECRETARY TO GOVERNMENT
29 MAR 54
REVENUE DEPARTMENT

__________ Department

Received __________ Registered __________

From (Name) Sri C.A.Vaidialingam,

Designation Government Pleader.

Station MADRAS

To
The Secretary to Government,
Revenue Department,
Fort St.George, MADRAS.

37279

Enclosures: No. 1797, dated 25/3/1954.

1954

REVENUE DEPARTMENT

Sir,

Sub: Suits- Land Acquisition- Mangalore Tk- Padukodi- Village- S.No.35/2.C- O.P.No.9/49 on the file of Sub Court, Mangalore- decree- Appeal to the High Court- A.S.No.318/1950- result.

Ref: G.O.200, Home. dt. 11/1/1941. not put up

Jo Supd

PW v.o
30/3/54

30/3/54

Rev v.o
23035
30-3-54

S.No.35/2C of Padukodi village, Mangalore Tk, measuring 1 cent was acquired at the instance of the Divisional Engineer Highways, Mangalore for the construction of a ferry shed. The Land Acquisition Officer (Revenue Divisional Officer, Mangalore) awarded a total compensation of Rs.28-12-0 inclusive of 15% solatium for the piece of land acquired. The party filed an application under section 18 of the Land Acquisition Act and the Subordinate Judge of Mangalore enhanced the compensation to Rs.1000 in O.P.No.9/49 on the file of Sub Court, Mangalore besides 15% solatium thereon in his decretal order dt. 18-11-1949. Against the said decision under instructions from the Board of Revenue in its Ref. B.P.Mis.170 dt. 11/2/1950 I filed

P

an appeal in the High Court.

The above appeal came up for hearing before Chandra Reddi J. on 24-3-1954 when His Lordship fixed the market value at Rs.500/- plus solatium. His Lordship directed each party to bear their own costs.

Government Pleader.

Copy to the Collector of South Kanara, Mangalore with ref. to ROC.9685/49.B.1.dt. 25/3/1950.

Copy to the Secretary Board of Revenue Chepauk, Madras.

26/19/4

Endt. No. 27279. F/54-1 dt. 14.4.54 PWD(F3)

Copy communicated to Ct. (H) and Bd. of Rev. for information and necessary action.

14.4.54

20/4

Dg The CE(H)
Dg The Bd of Rev
with copy of ppl-2 above

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14.4.54

(Same as Appl. and 23034C
29/3/1

3

C.F. 32 (a)—184,468—15-11-52

ASST. SECRETARY TO G
Received 1-APR 1954

UNDER SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT
Registered 29 MAR 1954

_______________Department

From (Name) Sri C.A.Vaidialingam,

Designation Government Pleader,

Station MADRAS.

To

The Secretary to Government
Revenue Department,
Fort St.George, MADRAS.

C

Enclosures:

No. 1797. dated 25/3/1954.

ASST. SECRETARY TO GOVERNMENT
28 MAR 1954

Sir,

Sub: Suits- Land Acquisition- Mangalore Tk-
Padukodi Village- S.No.35/2.C- O.P.No.9/49
on the file of Sub Court, Mangalore- decree-
Appeal to the High Court- A.S.No.318/1950-
result.
Ref: G.O.200, Home, dt. 11/1/1941.

S.No.35/2C of Padukodi village, Mangalore Tk, measuring 1 cent was acquired at the instance of the Divisional Engineer Highways, Mangalore for the construction of a ferry shed. The Land Acquisition Officer (Revenue Divisional Officer, Mangalore) awarded a total compensation of Rs.28-12-0 inclusive of 15% solatium for the piece of land acquired. The party filed an application under section 18 of the Land Acquisition Act and the Subordinate Judge of Mangalore enhanced the compensation to Rs.1000 in O.P.No.9/49 on the file of Sub Court, Mangalore besides 15% solatium thereon in his decretal order dt. 18-11-1949. Against the said decision under instructions from the Board of Revenue in its Ref. B.P.Mis.170 dt. 11/2/1950 I filed an appeal in the High Court.

The above appeal came up for hearing before Chandra Reddi J. on 24-3-1954 when His Lordship fixed the market Value at Rs.500/- plus soletium. His Lordship directed each party to bear their own costs.

Government Pleader.

Copy to the Collector of South Kanara, Mangalore with ref. to ROC 9685/49.B.1-dt.-25/3/1950

Copy to the Secretary, Board of Revenue, Chepauk, Madras.

4803

CW

Department Received Registered 27279

From

C. A. VAIDIALINGAM
GOVERNMENT PLEADER
HIGH COURT, MADRAS - 1.
Now at Chittoor. Collr'

ASSISTANT 16 JUN 1954 PUBLIC WORKS

To
The Secretary to Government,
Revenue epartment,
Madras, 9.

Enclosures :

No. 3383 17874, Dated June 1954

UNDER SECY. 18 JUN 54 U28190 REVENUE DEPARTMENT

Sir,

Suits - Land Acquisition - Madras High Court - A.S.No.318/50 - Result - Copy of judgment - forwarded.

My letter No. 1797, dated 25-3-54. transferred to P W D. in Rev U O 23035 C/54 dt 30-3-54

A certified copy of the judgment of the High Court in the above appeal is herewith forwarded. As the appeal of the Govt has been allowed in part, no further appeal need be filed against the portion disallowed

To Infd

Rev Deptt

Government Pleader.

~~Rev U.O.~~
P. W. D U.O. in continuation of Rev U.O. 23035 C/54-1 ~~Rd~~/ 30-3-54

15/6/54

Rev U O 42819 C/54-1 18/6/54
15-6-54

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Pwd (F3)

Endt. No. 48031-F154-1 dt 17-6.54

Copy communicated to C.E. (H) and Bd. of Rev. for information and necessary action in continuation of Govt Endt. No. 27279-F154-1 Pw dt 14-6-54.

Recd the file 22/6/54

17.6.54
16.6.54

To the C.E. (H)
To the Bd. of Rev }
(with copy of complaint and copy of judgment.)

(F) | P2
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17.6.54.

Note After issue may be added to Endt No. 27279-F154-1 Pw dt 14.6.54 (F)

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FIVE ANNAS
GOVERNMENT OF MADRAS
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In the High Court of Judicature at Madras.

Wednesday the Twenty fourth day of March,
One thousand nine hundred an fifty four.

Present:--

The Honourable Mr. Justice Chandra Reddy.

Appeal No. 318 of 1950.

1. The Revenue Divisional Officer and land Acquisition Officer Mangalore 2. The Collector of South Kanara -- Appellants (Petr. and 4th Respt.)

1. Nemi Raja Kannanthaya Ballal/2. Rathi Devi Amma 3. H.V. Fernandes -- Respondents (Respts. 1 to 3)

Appeal against the decree of the Court of the Subordinate Judge of South Kanara dated 18-11-1949 and passed in C.P. No. 9 of 1949.

This Appeal coming on for hearing the court delivered the following JUDGMENT:- Appeal No. 318 of 1950.

This is an appeal by the Government of Madras against the judgment of the Subordinate Judge of South Kanara enhancing the compensation awarded by the Land Acquisition Officer. On the 20th of January 1948, a notification was issued under S. 4 of the Land Acquisition Act (hereinafter to be called the Act) for acquiring a small

1-tsri

TWO ANNAS COURT FEE INDIA 2As
COURT FEE INDIA THREE ANNAS 3As

of land measured 1 cent adjoining the ferry at a village called Padukodi on the way to Kuloor. The 1st respondent is the husband of the 2nd respt- to whom he has granted on mulgeni tenure the suit and other lands. He has no objection to the compensation being paid to the 2nd respondent. The 3rd respondent is a lessee from the 2nd respondent. The 2nd respondent claimed a sum of Rs. 3000 by way of market value and solatium of 15 per cent thereon. But the LandAcquisition Officer awarded only a compensation of Rs.28-12-0 including the solatium. At the request of the claimants, a reference was made under s. 18 of the Act to the subordinate Judge of South Kanara. The subordinate Judge fixed the compensation at Rs. 1000 in addition to the solatium of 15 per cent. It is that judgment that is under appeal now.

In support of the appeal, it is urged by Mr. Srinivasan for the Government Pleader that the Subordinate Judge has fixed the compensation arbitrarily and without any reference

2-tsri

FIVE ANNAS
GOVERNMENT OF MADRAS
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to the material on record His contention is that the compensation fixed by the Land Acquisition Officer is a fair one and the claimants are not entitled to anything more than that. It is argued by the learned counsel that the compensation paid by the Land Acquisition Officer works out at Rs. 2500 per acre and this is far in excess of the compensation paid to the same claimants under Ex. A-2 i.e. at Rs. 480 per acre.

Ex. A-2 relates to an extent of 2 acres 10 cents included in S. Nos. 35/2-B and 35/5-B, 1 acre 31 ~~32~~ cents being dry land and the other portion being garden land. But I do not think that this document can furnish real data for determining the compensation to be paid for the suit site. That was on the slope of a hill and about two furlongs away from the site in question.

The documents relied on for the respondent are Exs. B-1, B-2 and B-3. Ex. B-1 is a lease deed in favour of the

3-tsri

TWO ANNAS 2AS COURT FEE INDIA
COURT FEE INDIA 3AS THREE ANNAS

of the 3rd respondent executed on 27-5-47 for a period of ten months the rent stipulated being Rs. 10/- a month. If this document should form the basis of the market value of the site, it cannot be said that the compensation awarded by the Subordinate Judge is excessive. But Ex. B-1 cannot form any basis for determining the value of the site. There is no renewal clause in that document. This property does not seem to have been leased out to anyone at any time earlier than s Ex. B-1 nor is it proved to have ~~fetened~~ fetched any ibcome. It is true that R.W. 1 the son of respondents 1 and 2 stated that there was a building in that place formarly, which was leased out on a rental of Rs. 8 or Rs 9/- but that building was washed away and no attempts were made to put up another building on that site. But the lower court was not prepared to believe him and I think rightly as the lease which are said to be with him. were not produced. The Subordinate Judge was not

4-tsri

FIVE ANNAS
GOVERNMENT OF MADRAS
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inclined to take the rent under Ex. B-1 as the basis of the value as in his opinion the income was only a stray or casual one.

Another document called in aid by the respondents is Ex. B-2, a lease deed in respect of about 2 cents of land, adjoining the suit site. The rent fixed under the document is Rs. 144 per annum and the lease was to enure for a period of eight years. This document also cannot furnish any data for the reason that the rent fixed under the document is not only for the site but also for the building thereon. It is difficult to apportion the rent between the site and the building.

One other document on which reliance is placed for the claimants is Ex. B-3 dated 1-10-1947. This site also belongs to the claimants and is adjacent to the suit site, the purpose of the lease being to put up a bunk near the ferry Under Ex. B-3 the lessor gets a monthly rent of Rs. 2-8-0 for a site of about

5-tsri

COURT FEE INDIA TWO ANNAS 2As
COURT FEE INDIA THREE ANNAS 3As

about 1/10 of a cent, the lease period being 11 months.

Mr. Krishna Rao argues that, having regard at least to this document, the sum of Rs. 1000 awarded by the Subordinate Judge cannot be regarded in any way as excessive. The income derived by the claimants on the basis of Ex. B-3 at 20 years purchase will be far more than Rs. 1000/- In my opinion, the rent fixed under Ex. B-3 cannot be a criterion for the reason that it is of a small extent and it is for the purpose of putting up a bunk. That apart the evidence of R.W. 1 shows that the suit site is subject to inundation. There is also the admission of R.W. 2 that "for the suit site Rs. 10,000 to Rs. 12,000 per acre is fair compensation" The learned subordinate Judge got over this admission by observing that this opinion of R.W. 2 cannot be considered to be the opinion of

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an expert as he has no property in the neighbourhood and there are no sales whatsoever to test his opinion. Mr. Krishna Rao, besides adopting this reasoning, urges that whatever might be the force of that admission, if the extent to be sold is one acre or more, it could not apply to the suit site as it is only one cent of land. I do not consider that bridging the river at Kuloor would in any way diminish the importance of the locality. If as a result of the construction of the bridge over the river, the necessity for having a ferry shed disappears, there will be bus traffic over the bridge and that may enhance the utility of this place. Taking into considertaion the potentiality of the site being used as building site and the rent which the neighbourhood sites are fetching and the rent which this site is likely to fetch and other advantages, I fix the market value of the site at Rs. 500 besides the solatium payable to the claimants.

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The 2nd respondent is also entitled to interest from the date on which possession was taken from her. The parties will bear their own costs in this court. The order as to costs in the lower Court will stand. The appeal/is allowed to the extent indicated above.

(Sd) V.T. Kandaswami,

30-3-1954

Dy. Registrar, A.S.,

(True Copy)

Dsh. Supdt. of Copyists. 31/5/54

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cy by Tsri.
JUDGMENT, d/ 24-3-1954
Appeal No. 318 of 1950.

THE HIGH COURT OF JUDICATURE
AT MADRAS.
4074 of 1954.
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Dsh- Supdt. 31/5/54

Kripanidhi
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